



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG 2018-0473

RIN 1625-AA09

Drawbridge Operation Regulation; Anacostia River, Washington, DC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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**SUMMARY:** The Coast Guard is modifying the existing drawbridge operating regulation for the Frederick Douglass Memorial Bridge across Anacostia River, mile 1.2, in Washington, DC. The modified rule allows the existing drawbridge to remain in the closed-to-navigation position, and is necessary to accommodate the construction of a new fixed bridge on an alignment 18 feet south of the existing drawbridge, and the removal of the existing drawbridge.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Type USCG-2018-0473 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Mr. Martin A. Bridges, Fifth Coast Guard District (dpb), at (757) 398-6422,

e-mail [Martin.A.Bridges@uscg.mil](mailto:Martin.A.Bridges@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

On February 2, 2018, we published a notice of temporary deviation from drawbridge regulation entitled “Drawbridge Operation Regulation; Anacostia River, Washington, DC,” in the Federal Register (83 FR 4845). The temporary deviation was necessary to accommodate the construction and replacement of the existing Frederick Douglass Memorial Bridge with a fixed bridge on an alignment 18 feet south of the existing drawbridge. This temporary deviation allowed the existing drawbridge to remain in the closed-to-navigation position during construction of the new fixed bridge and was effective from 6 a.m. on February 2, 2018, through 6 a.m. on August 1, 2018.

On June 25, 2018, the Coast Guard published a notice of public rule making entitled Drawbridge Regulation, Anacostia River, Washington, DC, in the Federal Register (83 FR 32602). We received no comments on this rule.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority 33 U.S.C 499. The Frederick Douglass Memorial Bridge across the Anacostia River, mile 1.2, in Washington, DC has a vertical clearance of 40 feet above mean high water in the closed-to-navigation position and

unlimited clearance in the open-to-navigation position. The current operating regulation is published in 33 CFR §117.253 (a).

On December 4, 2017, the Coast Guard signed Bridge Permit (2-17-5) authorizing the replacement of the existing drawbridge with a fixed bridge with a vertical clearance of 42 feet above mean high water on an alignment 18 feet south of the existing drawbridge.

Issuance of the bridge permit followed a multi-year process involving completion of an environmental impact statement, Coast Guard Record of Decision, and a navigation impact report; public meetings held on March 4, 2008, April 28, 2011, July 30, 2013, May 5, 2014, and January 22, 2015; publishing of a preliminary public notice for navigation on November 4, 2013, and public notice for the bridge permit application on October 20, 2017.

This modification of the operating regulation of the existing drawbridge is designed to mitigate vehicular congestion, maintain public safety, and provide for safe and effective bridge construction and removal, while also meeting the existing and future needs of navigation. The District Department of Transportation, owner and operator of the Frederick Douglass Memorial Bridge, requested this change in the operating regulation. Given the small difference in vertical clearances above mean high water between the existing drawbridge at 40 feet and new fixed bridge at 42 feet, placing the existing drawbridge in the closed-to-navigation position will not restrict present navigation from transiting through the bridge. There have been no requests for an opening of the existing drawbridge aside from vessels engaged in bridge construction and removal since the temporary deviation published on February 2, 2018.

#### **IV. Discussion of Comments, Changes and the Final Rule**

The Coast Guard provided a comment period of 30 days and no comments were received. No changes were made in the regulatory text between the NPRM and this final rule.

## **V. Regulatory Analysis**

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This is not considered a significant regulatory action. This determination is based on the findings that: (1) the potential impact is small, given the limited number of vessels that required a bridge opening over the past 10 years, including zero requests since 2013; (2) the small difference in vertical clearances above mean high water between the existing drawbridge at 40 feet and the new fixed bridge at 42 feet; and (3) vessels will be able to transit through the drawbridge following removal of the draw span, after the new bridge opens to vehicular traffic.

## B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy

or action of the Coast Guard.

C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We received zero comments concerning this section of this rule.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule will not result in such an

expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble. We received zero comments concerning this section of this rule.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f), and have made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction. A Record of Environmental Consideration and a Memorandum for the Record are not required for this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the “For Further Information Contact” section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security

Delegation No. 0170.1.

2. Revise §117.253 (a) to read as follows:

§ 117.253 Anacostia River

(a) The draw of the Frederick Douglass Memorial (South Capitol Street) bridge, mile  
1.2, need not be opened for the passage of vessels.

\* \* \* \* \*

Dated: October 15, 2018

K. M. Smith  
Rear Admiral, U.S. Coast Guard  
Commander, Fifth Coast Guard District  
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